

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

JIMMY MITCHELL,

Plaintiff

V.

NO. 3:94CV88-S-D

BUDDY EAST, ET AL,

Defendants

O P I N I O N

Upon further consideration of the complaint and the files and records in this action, the court finds that an order dated August 23, 1994, entered by the magistrate judge, granted leave to proceed in forma pauperis, but directed that no process issue until further order of the court, and required plaintiff to amend his complaint within twenty (20) days by filing an attachment to the P-3 form. Plaintiff was warned that his failure to timely comply with the requirements of the order might lead to dismissal of his lawsuit.

Although more than 45 days have elapsed since that time, plaintiff has failed to communicate further with the court, either to inquire as to the status of his case or to attempt to comply with the court's August 23, 1994, order. It is obvious that plaintiff has lost interest in this lawsuit and has decided to abandon it.

Rule 41(b), Federal Rules of Civil Procedure, provides,  
inter alia,

For failure of the plaintiff to prosecute  
or to comply with these Rules or any  
order of the court defendant may move for  
dismissal of an action or of any claim  
against him.

Even though the Rule speaks in terms of dismissal on  
motion of a defendant, it is now settled that the court has the  
inherent authority to dismiss sua sponte for want of prosecution.  
Link v. Wabash Railroad, 370 U.S. 626 (1962); Lopez v. Aransas  
County Independent School District, 570 F.2d 541, 544 (5th Cir.  
1978). Rule 41(b) further provides, inter alia:

Unless the court in its order for  
dismissal otherwise specifies, dismissal  
under this subdivision and any dismissal  
not provided for in this rule, other than  
a dismissal for lack of jurisdiction, for  
improper venue, or for failure to join a  
party under Rule 19, operates as an  
adjudication upon the merits.

Since the defendants have never been called upon to  
respond to the plaintiff's pleading, and have never appeared in  
this action, and since the court has never considered the merits of  
plaintiff's claims, the court's order of dismissal should provide  
that dismissal is without prejudice. Shaw v. Estelle, 542 F.2d 954  
(5th Cir. 1976).

A final judgment in accordance with this opinion will be  
entered.

THIS the                      day of                      , 1994.

---

CHIEF JUDGE